

Attorneys

Defense Verdict In Malicious Prosecution Suit Arising From Legal Malpractice Suit

In July, 1992 Rodolfo Ramirez suffered severe head and face trauma resulting in numerous fractures, brain injuries, loss of vision in one eye, loss of smell, and loss of taste, when a lid from a pressurized irrigation tank blew off in his face. A capper approached Ramirez while he was hospitalized, and took him to the Law Offices of Sheldon Sacks in Beverly Hills. Ramirez retained the Law Offices of Sheldon Sacks, consisting of Sheldon Sacks and his daughter, Carole Sacks Allen, based on allegedly untrue representations concerning the firm's experience and expertise.

The Law Offices of Sheldon Sacks filed a products liability/premises liability action on behalf of Mr. and Mrs. Ramirez. They did almost nothing to prepare the case for trial, and then attempted to exert extreme and outrageous pressure upon the Ramirezes to accept an inadequate and undervalued settlement, five days before the scheduled trial, it was alleged. The Ramirezes then retained David Drexler who attempted to rehabilitate the case. Drexler obtained a jury verdict of \$1.9 million, which was reduced to \$1.2 million, based on comparative negligence findings. Drexler believed that a substantially greater judgment, and little no comparative negligence offset would have resulted, but for the negligence and improper conduct of the Sackses.

Thereafter, Drexler, on behalf of the Ramirezes, sued Sheldon Sacks, the Law Offices of Sheldon Sacks and Carole Sacks Allen for legal malpractice, fraud, intentional infliction of emotional distress, breach of fiduciary duty and breach of contract. Allen was included based on her active involvement in representing the Ramirezes, and based on principles of actual or ostensible partnership. Allen was voluntarily dismissed one year after the filing of the complaint for tactical and economic reasons.

The plaintiff, Carole Sachs Allen, then brought this action against the defendants for malicious prosecution. Plaintiff contended that she was sued without probable cause, claiming that the defendants knew she was not a partner in the firm, that she had no active involvement in the representation of the Ramirezes, and that the Ramirezes' representation was not mishandled. She contended that her voluntary dismissal was on the substantive merits, alleging that the defendants knew there

was no case against her and there was a motion for summary judgment pending. Plaintiff alleged further that as a result of the lawsuit against her, she suffered an exacerbation of asthma, and the activation of systemic lupus, which caused brain damage and resulting total disability from the practice of law.

The defendants contended that the Sacks firm was grossly negligent in their handling of the products liability case, and engaged in fraudulent conduct toward their clients. They also contended that there was extensive evidence that plaintiff Allen was actively involved in the Ramirezes representation and that she had breached duties to the Ramirezes as her clients. Defendants contended that there existed ample factual information to conclude that Allen could be liable under the causes of action alleged against her. Defendants also contended that Allen was dismissed for economic and practical reasons not bearing on the substantive merits of the case against her, and hence the dismissal was not a favorable termination for purposes of malicious prosecution. The Defendants also contended that there was no causative link between the lawsuit and plaintiff's alleged illness and resulting injury. Mr. and Mrs. Ramirez claimed reliance on advice of counsel.

Injury: Plaintiff alleged damages based on medical specials, attorney's fees incurred in the defense of the underlying case, loss of earnings based on total disability (withdrawn during trial), general damages including pain and suffering as a result of alleged debilitating, totally disabling systemic lupus with accompanying brain damage, and punitive damages.

Special Damages in Evidence: Medical, \$75,000.00; Loss of earnings, \$2.5 million (withdrawn during trial); Attorneys fees in defense of underlying case, \$85,000.00.

Result: Directed verdict for defendants Rodolfo and Isabel Ramirez after both plaintiff and defendants rested. Jury verdict for defendant David Drexler.

A special verdict form was submitted to the jury, and they returned a verdict for the defense on the first disputed issue in the special verdict form, the issue of favorable termination. Poll. 12 - 0.

Settlement Negotiations: Plaintiff's original demand was \$2,000,000.00; Plaintiff next made a settlement demand pursuant to C.C.P. § 998, in the amount of \$499,999.00; Plaintiff then demanded \$235,000.00 at mediation. Defendant David Drexler offered \$25,000.00 pursuant to a C.C.P. § 998

VERDICTS, SETTLEMENTS & TACTICS

Plaintiff's Expert Witnesses: Carl Keener of Paker, Silverberg & Keener, Attorney: Daniel J. Wallace, M.D., Rheumatologist; Andrew Wachtel, M.D., Pulmonologist.

Defendants' Expert Witnesses: Charles Mazursky, Mazursky, Schwartz & Angelo, Attorney: Peng Thim Fan, M.D., Rheumatologist/Immunologist; James L. High, M.D., Psychiatrist.

Plaintiff's Attorney: Nathan B. Hoffman, Lance Orloff, Daniels, Baratta & Fine, Los Angeles, California

Defendants' Attorneys: Jonathan Cole, and Jon D. Robinson, of Nemecek & Cole, Sherman Oaks, California (for Defendants Rodolfo and Isabel Ramirez); James J. Kjar, of Reback, Hulbert, McAndrews & Kjar, Manhattan Beach, CA; Jonathan B. Cole and Jon D. Robinson, Nemecek & Cole, Sherman Oaks, California (for Defendant David Drexler)

Allen v. Drexler, No. BC 154430 (Los Angeles Cty. Super. Ct. Cal. December 12, 1998)

Medical Liability

Defense Verdict in Suit Alleging Birth Injury

Jacqueline Devitt had an uneventful pregnancy until October 30, 1989, the date of labor and delivery of the minor plaintiff, Lindsey Devitt. It was contended that because the fetus had an occiput posterior position delivery was destined to be difficult. It was claimed that there was an arrest of labor and that the failure to descend resulted in both trauma and asphyxia to the fetus. Apgars were 8 and 9 at the time of birth and the description of the child was pink with good suck and Moro.

Approximately 15 minutes after birth, Lindsey began grunting and oxygen was applied. Approximately 25 hours after birth, the child experienced seizures. At that time a subarachnoid hemorrhage was diagnosed.

Plaintiffs contended that Dr. MacDonald was negligent because although he was present at the hospital, he failed to examine the mother during her 3 hour second stage. It was contended that a cesarean section should have been performed earlier and that trauma from contractions as well as a chronic lack of oxygen caused the child to suffer her injuries.

Defense contended that if such injuries had occurred, they would have been obvious on the fetal monitoring strips. Further, an MRI taken after delivery did not show any subarachnoid hemorrhage. It was contended that the child suffered an unrelated stroke shortly after her birth which caused her seizures 25 hours later.

Injury: Mild right hemiparesis.

Plaintiffs claimed in excess of \$2.1 million for lost earning potential, medical expenses and pain and suffering.

Result: Jury verdict in favor of defendant.

The jury found that although Dr. MacDonald was

negligent, his negligence did not cause the minor plaintiff's injuries.

Plaintiff's Expert Witnesses: Bernard Shriffrin, ob/gyn, Cal.; Barry Shaywitz, pediatric neurologist, New Haven, Conn.:

Defendant Expert Witnesses: Ira Bergman, pediatric neurologist, Pittsburgh, Pa.; Daniel Edystone, M.D., Obstetrician/gynecologist, New York.

Plaintiff's Attorney: Steven Erikson of Pegalis & Wachsmann, Philadelphia PA

Defendant's Attorney: Diane Barr Quinlin of Grogan, Graffam, McGinley & Lucchino, P.C., Pittsburgh, PA

Devitt v. MacDonald, No. 96-11902 (Allegheny County Court of Common Pleas, Pittsburgh, Pennsylvania Oct. 2, 1998)

Comments

Defendant's attorney, Diane Barr Quinlin, comments that the jury found that the injuries to the child would have occurred regardless of the doctor's conduct. They were not pleased that the patient was not seen during the entire second stage of labor but were impressed by Dr. Bergman's testimony that the stroke was unrelated to the labor.

\$21.5 Million Jury Verdict In Suit Alleging Birth Injury

Guadalupe Dominguez, a 37-year-old (gravida 8, para 6), was admitted by Dr. Cecelia Lin to Garfield Medical Center on October 20, 1992, at 11:25 p.m. She was 38+ weeks pregnant and had been receiving her prenatal care from Dr. Lin, who thought she was at risk